

ORIGINAL

UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT
NORTHERN DIST. OF TX
FILED

2022 MAR 25 AM 9:14

MELISSA ARMSTRONG, et al.,

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§
§

Plaintiff(s),

vs.

Civil Action No. 3:20-CV-3150-M

DEPUTY CLERK ✓

KIMBERLY-CLARK CORPORATION,

Defendant(s).

RETURN OF SERVICE

Came to my hand on **Thursday, March 24, 2022 at 9:14 AM**,
Executed at: **1999 BRYAN STREET, SUITE 900, DALLAS, TX 75201**
at **9:30 AM**, on **Thursday, March 24, 2022**,
by delivering to the within named:

SUPERVALU, INC.

by delivering to its **Registered Agent, CT CORPORATION SYSTEM**
by personally delivering to its **Authorized Employee, KIRK ATKINS**
a true copy of this

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT
INSPECTION OF PREMISES IN A CIVIL ACTION with EXHIBITS A & B**

having first endorsed thereon the date of the delivery.

BEFORE ME, the undersigned authority, on this day personally appeared Tracy Edwards who after being duly sworn on oath states: "My name is Tracy Edwards. I am a person not less than eighteen (18) years of age and I am competent to make this oath. I am a resident of the State of Texas. I have personal knowledge of the facts and statements contained herein and aver that each is true and correct. I am not a party to nor related or affiliated with any party to this suit. I have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I am familiar with the Texas Rules of Civil Procedure, and the Texas Civil Practice and Remedies Codes as they apply to service of process. I am certified by the Judicial Branch Certification Commission to deliver citations and other notices from any District, County and Justice Courts in and for the State of Texas in compliance with rule 103 and 501.2 of the TRCP.

By:

Tracy Edwards - PSC 1872 - Exp 03/31/24
served@specialdelivery.com

Subscribed and Sworn to by Tracy Edwards, Before Me, the undersigned authority, on this
24th day of March, 2022.



[Signature]
Notary Public in and for the State of Texas

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Texas

Melissa Armstrong, et al.

Plaintiff

v.

Kimberly-Clark Corporation

Defendant

Civil Action No. 3:20-CV-3150-M

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: SuperValu, Inc. c/o CT Corporation System Inc., 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: Attached Exhibit A - Documents Requested by Subpoena.

Place: Hedrick Kring Bailey PLLC c/o Joshua Hedrick
1700 Pacific Ave., Suite 4650, Dallas TX 75201
josh@hedrickkring.com

Date and Time:

4/28/22

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/22/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Melissa Armstrong, et al., who issues or requests this subpoena, are:

Joshua L. Hedrick; Hedrick Kring Bailey PLLC 1700 Pacific Ave., Suite 4650, Dallas TX 75201; (214) 880-9600;
josh@hedrickkring.com

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:20-CV-3150-M

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

RETURN / AFFIDAVIT
PROOF / ATTACHED

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

Instructions

1. To the extent any document, data, or records requested herein exists in electronic format, it should be produced in its native electronic format unless otherwise agreed among counsel for the parties. If the documents, data, or records cannot be presented in the format requested, please confer with Plaintiffs' counsel regarding the format for production.

Definitions

1. "Document" includes electronically-stored information (ESI) and is otherwise synonymous with the term "document" as used in Federal Rule of Civil Procedure 34.

2. "Recalled Products" is defined as Cottonelle Flushable Wipes-branded products manufactured between February 7, 2020, and September 14, 2020, that were subject to a manufacturer recall by the Kimberly-Clark Corporation. A list of stock-keeping units (SKU) and lot numbers associated with Recalled Products is attached as Exhibit B.

3. "You" or "Your" means: SuperValu, Inc. and anyone acting on behalf of SuperValu, Inc.

Documents

1. Documents reflecting the name, address, email address, and telephone number of every individual who purchased Recalled Products from all Your locations.

2. For each individual identified in response to Request No. 1, please provide Documents reflecting the following information for each individual's purchase(s) of Recalled Products:

- a. Retail purchase location;
- b. SKU/lot number of product;

- c. Method of payment (*i.e.*, Visa credit card);
- d. Date of purchase; and
- e. Amount of purchase.

3. If You sent any individual identified in response to Request No. 1 a notice relating to the Recalled Product, please provide Documents reflecting the following information:

- a. The text of the notice (a copy of the template notice is sufficient if the same for all customers);
- b. The method of notice (*i.e.*, direct mail, e-mail)
- c. The date of notice;
- d. The contact information associated with notice recipient (name, address, email address, and telephone number) if different than the information provided in response to Request No. 1.

4. If You sent notices relating to the Recalled Product, please provide Documents reflecting the total number of notices sent, categorized by state.

5. If any individual identified in response to Request No. 1 requested or received a refund from You for their purchase of Recalled Products, please provide Documents reflecting the following information:

- a. All correspondence relating to the refund request;
- b. Retailer refund location;
- c. SKU/lot number of refunded product;
- d. Method of refund (*i.e.*, Visa credit card);
- e. Date of refund; and
- f. Amount of refund.

6. Documents reflecting all communications to or from customers relating to Recalled Products.

7. Documents reflecting Your total sales of the Recalled Products across all retail locations.

8. Documents reflecting the total amounts of refunds You offered to customers and that were accepted by customers relating to Recalled Products across all retail locations.

EXHIBIT B

SKU	104493203	104654601	104654602	104853301	104856201	104867401	104898401	104898402	104977601
Sales Code or WIP	Sales	WIP	WIP	Sales	Sales	Sales	WIP	Sales	Sales
Copack or Base	Base	N/A	N/A	Base	Base	Base	N/A	Base	Base
BI005505X	BI004105X	BI007005X	BI003905X	BI003805X	BI005305X	BI006205X	BI006405X	BI005005X	
BI005605X	BI004205X	BI007105X	BI004005X	BI003905X	BI005405X	BI006305X	BI011705X		
BI005705X	BI004305X	BI007705X	BI004105X	BI004305X	BI006805X	BI006405X	BI011805X		
BI006905X	BI004805X	BI007805X	BI004405X	BI004405X	BI006905X		BI011905X		
BI007005X	BI004905X	BI008205X	BI004505X	BI007105X	BI007305X		BI012005X		
	BI006105X	BI008305X	BI004605X	BI007205X	BI007405X		BI013205X		
	BI006205X	BI008405X	BI004705X	BI007805X	BI009205X		BI013305X		
	BI007405X	BI008505X	BI004805X	BI007905X	BI010005X		BI013405X		
	BI007505X	BI009605X	BI005005X	BI008505X	BI010105X		BI014705X		
	BI007605X	BI009705X	BI005105X	BI008605X	BI015105X		BI014805X		
	BI007705X	BI009805X	BI005205X	BI008705X	BI015205X		BI016105X		
		BI009905X	BI005305X	BI008805X	BI019105X		BI016205X		
		BI010305X	BI005705X	BI009505X	BI019205X		BI017105X		
		BI010405X	BI005805X	BI009605X	BI023605X		BI017205X		
		BI010505X	BI005905X	BI010105X			BI017305X		
		BI010605X	BI006005X	BI010205X			BI018905X		
		BI013805X	BI006105X	BI010305X			BI019005X		
		BI013905X	BI006505X	BI010805X			BI021705X		
		BI014005X	BI006605X	BI010905X			BI021805X		
		BI017305X	BI006705X	BI011005X			BI023105X		
		BI017405X	BI006805X	BI011105X			BI023205X		
			BI007205X	BI011505X			BI024405X		
			BI007305X	BI011605X			BI024505X		
			BI008005X	BI011705X			BI024605X		
			BI008105X	BI012005X					
			BI008205X	BI012105X					
			BI008805X	BI012205X					
			BI008905X	BI012305X					
			BI009005X	BI014405X					
			BI009105X	BI014505X					
			BI009205X	BI014605X					
			BI009305X	BI015205X					
			BI009405X	BI015305X					
			BI009505X	BI015405X					
			BI009905X	BI015505X					
			BI010005X	BI015705X					
			BI010605X	BI015805X					
			BI010705X	BI015905X					
			BI010805X	BI016505X					
			BI011305X	BI016605X					
			BI011405X	BI016705X					
			BI011505X	BI017505X					
			BI012705X	BI017605X					
			BI012805X	BI018005X					
			BI012905X	BI018105X					
			BI013005X	BI018205X					
			BI013405X	BI018605X					
			BI013505X	BI018705X					
			BI013605X	BI019205X					
			BI013705X	BI019305X					
			BI014105X	BI019405X					
			BI014205X	BI020005X					
			BI014305X	BI020105X					
			BI014405X	BI020705X					
			BI014805X	BI020805X					
			BI014905X	BI020905X					
			BI015005X	BI021305X					
			BI015105X	BI021405X					
			BI015505X	BI022105X					

EXHIBIT B

SKU	104493203	104654601	104654602	104853301	104856201	104867401	104898401	104898402	104977601
Sales Code or WIP	Sales	WIP	WIP	Sales	Sales	Sales	WIP	Sales	Sales
Copack or Base	Base	N/A	N/A	Base	Base	Base	N/A	Base	Base
				BI015605X	BI022205X				
				BI015705X	BI022305X				
				BI016205X	BI022705X				
				BI016305X	BI022805X				
				BI016405X	BI023705X				
				BI016505X	BI023805X				
				BI016905X	BI024105X				
				BI017005X	BI024905X				
				BI017605X	BI025005X				
				BI017705X	BI025105X				
				BI017805X					
				BI017905X					
				BI018005X					
				BI018305X					
				BI018405X					
				BI018505X					
				BI019005X					
				BI019105X					
				BI019705X					
				BI019805X					
				BI019905X					
				BI020005X					
				BI020405X					
				BI020505X					
				BI020605X					
				BI020705X					
				BI021105X					
				BI021205X					
				BI021305X					
				BI021805X					
				BI021905X					
				BI022005X					
				BI022105X					
				BI022505X					
				BI022605X					
				BI022705X					
				BI023205X					
				BI023305X					
				BI023405X					
				BI023505X					
				BI023605X					
				BI023905X					
				BI024005X					
				BI024105X					
				BI024605X					
				BI024705X					
				BI024805X					
				BI024905X					
				BI025305X					
				BI025405X					
				BI025505X					
				BI025605X					

EXHIBIT B

105099400 Sales/WIP Base/Copack	105111600 WIP Base	105123500 WIP Base	105239000 WIP Base	105284600 Sales/WIP Base/Copack	103597006 Sales Copack	104064605 Sales Copack	104347802 Sales Copack	104401902 Sales Copack	104725101 Sales Copack
BI005405X	BI011105X	BI003905X	BI019505X	BI005705X	BI004521X	BI008506X	BI004321X	BI004821X	SR005502X
BI005505X	BI011205X	BI005705X	BI019605X		BI005021X	BI008606X	BI004421X	BI004921X	SR005602X
	BI011305X	BI006505X	BI019705X		BI005121X	BI010406X	BI004921X	BI005821X	SR006202X
	BI012305X	BI007905X	BI021605X		BI005221X	BI010506X	BI005021X	BI007221X	SR006902X
	BI012405X	BI008005X	BI021705X		BI005921X	BI013906X	BI005621X	BI007321X	
	BI012505X		BI022805X		BI006021X	BI014006X	BI005721X	BI007721X	
	BI012605X		BI022905X		BI006321X	BI014106X	BI005821X	BI007821X	
	BI012705X		BI024105X		BI007021X	BI014706X	BI006321X	BI008521X	
	BI013005X		BI024205X		BI007121X	BI014806X	BI006421X	BI008621X	
	BI013105X		BI024305X		BI007221X	BI014906X	BI006521X	BI009021X	
	BI013205X				BI007821X	BI018106X	BI006921X	BI009121X	
	BI014005X				BI007921X	BI018206X	BI007021X	BI009721X	
	BI014105X				BI008021X		BI007721X	BI009821X	
	BI014605X				BI008621X		BI008421X	BI009921X	
	BI014705X				BI008721X		BI008521X	BI010421X	
	BI015905X				BI008821X		BI013921X	BI010521X	
	BI016005X				BI009206X		BI014021X	BI018121X	
	BI016105X				BI009221X		BI014121X	BI018221X	
	BI016705X				BI009306X		SR007602X	SR009002X	
	BI016805X				BI009321X		SR007702X	SR009102X	
	BI016905X				BI009406X		SR007802X	SR009202X	
	BI017005X				BI009421X		SR008602X	SR009302X	
	BI017105X				BI009506X		SR008702X	SR009702X	
	BI017405X				BI009521X		SR009002X	SR009802X	
	BI017505X				BI009906X		SR009102X	SR010402X	
	BI018205X				BI009921X		SR009202X	SR010502X	
	BI018305X				BI010006X		SR009302X	SR010602X	
	BI018705X				BI010021X		SR009402X	SR010702X	
	BI018805X				BI010106X		SR009502X	SR010802X	
	BI018905X				BI010121X		SR009702X	SR011102X	
	BI019405X				BI010206X		SR009802X	SR014702X	
	BI019505X				BI010221X		SR009902X	SR014802X	
	BI020105X				BI010506X		SR010002X	SR014902X	
	BI020205X				BI010521X		SR010102X	SR015002X	
	BI020305X				BI010606X		SR010402X	SR015302X	
	BI020405X				BI010621X		SR010502X	SR015402X	
	BI020905X				BI010706X		SR010602X	SR015502X	
	BI021005X				BI010721X		SR010702X		
	BI021105X				BI010806X		SR010802X		
	BI021405X				BI010821X		SR011102X		
	BI021505X				BI010906X		SR011202X		
	BI021605X				BI010921X		SR011302X		
	BI022305X				BI014121X		SR011402X		
	BI022405X				BI014221X		SR011502X		
	BI022505X				BI014321X		SR011802X		
	BI022905X				BI014421X		SR011902X		
	BI023005X				BI014721X		SR012002X		
	BI023105X				BI014821X		SR012102X		
	BI023805X				BI014921X		SR012502X		
	BI023905X				BI015021X		SR012602X		
	BI024305X				BI015121X		SR012702X		
	BI024405X				BI017421X		SR012802X		
	BI025105X				BI017521X		SR012902X		
	BI025205X				BI017621X		SR013202X		
	BI025305X				BI017721X		SR013302X		
	BI025605X				BI017821X		SR013202X		
	BI025705X				BI017921X		SR013302X		
	BI025805X				BI018221X		SR013402X		
					BI018321X		SR013502X		

EXHIBIT B

105099400	105111600	105123500	105239000	105284600	103597006	104064605	104347802	104401902	104725101
Sales/WIP	WIP	WIP	WIP	Sales/WIP	Sales	Sales	Sales	Sales	Sales
Base/Copack	Base	Base	Base	Base/Copack	Copack	Copack	Copack	Copack	Copack
					BI018421X		SR013602X		
					BI018521X		SR013702X		
					SR007602X		SR014102X		
					SR007702X		SR014202X		
					SR008602X		SR014302X		
					SR008702X		SR014702X		
					SR009002X		SR014802X		
					SR009102X		SR014902X		
					SR009202X		SR015002X		
					SR009302X		SR015102X		
					SR009402X		SR015302X		
					SR009502X		SR015402X		
					SR009702X		SR015502X		
					SR009802X		SR017702X		
					SR010002X		SR017802X		
					SR010102X		SR017902X		
					SR010402X		SR018102X		
					SR010502X		SR018202X		
					SR010602X		SR018402X		
					SR010702X		SR018502X		
					SR010802X		SR018802X		
					SR011102X		SR018902X		
					SR011202X		SR019002X		
					SR011302X		SR019102X		
					SR011502X		SR019202X		
					SR011802X		SR019302X		
					SR011902X		SR019502X		
					SR012002X				
					SR012102X				
					SR012202X				
					SR012802X				
					SR012902X				
					SR013202X				
					SR013302X				
					SR013402X				
					SR014202X				
					SR014302X				
					SR014402X				
					SR014702X				
					SR014802X				
					SR014902X				
					SR015002X				
					SR015102X				
					SR015302X				
					SR015402X				
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					SR017902X				
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